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15 *Attorneys for Plaintiff*

16 **UNITED STATES DISTRICT COURT**
17 **DISTRICT OF NEVADA**

18 **SARI ZAGORSKI, Individually**
19 **and On Behalf of All Others**
Similarly Situated,

20 Plaintiff,

21 v.

22 **FOCUS RECEIVABLES**
23 **MANAGEMENT, LLC,**

24 Defendant.

Case No.:

[CLASS ACTION]

**COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF PURSUANT
TO THE TELEPHONE CONSUMER
PROTECTION ACT, 47 U.S.C. § 227,
ET SEQ.; AND THE FAIR DEBT
COLLECTION PRACTICES ACT,
15 U.S.C. § 1692 ET SEQ.**

JURY TRIAL DEMANDED

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INTRODUCTION

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1. SARI ZAGORSKI (“Plaintiff”) brings this Class Action Complaint for damages, injunctive relief, and any other available legal or equitable remedies, resulting from the illegal actions of FOCUS RECEIVABLES MANAGEMENT, LLC (“Defendant”) in negligently and/or intentionally contacting Plaintiff on Plaintiff’s cellular telephone, in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227 et seq., (“TCPA”), thereby invading Plaintiff’s privacy and the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq., (“FDCPA”). Plaintiff alleges as follows upon personal knowledge as to herself and her own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by her attorneys.
2. The actions alleged herein to have been undertaken by any and all Defendants were undertaken by each defendant individually, were actions that each defendant caused to occur, were actions that each defendant authorized, controlled, directed, or had the ability to authorize, control or direct, and/or were actions each defendant assisted, participated in, or otherwise encouraged, and are actions for which each defendant is liable. Each defendant aided and abetted the actions of the defendants set forth below, in that each defendant had knowledge of those actions, provided assistance and benefited from those actions, in whole or in part. Each of the

defendants was the agent of each of the remaining defendants, and in doing the things hereinafter alleged, was acting within the course and scope of such agency and with the permission and consent of other defendants.

3. The TCPA was designed to prevent calls like the ones described within this complaint, and to protect the privacy of citizens like Plaintiff. “Voluminous consumer complaints about abuses of telephone technology – for example, computerized calls dispatched to private homes – prompted Congress to pass the TCPA.” *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740, 744 (2012).

4. In enacting the TCPA, Congress intended to give consumers a choice as to how creditors and telemarketers may call them, and made specific findings that “[t]echnologies that might allow consumers to avoid receiving such calls are not universally available, are costly, are unlikely to be enforced, or place an inordinate burden on the consumer. TCPA, Pub.L. No. 102–243, §

11. Toward this end, Congress found that:

[b]anning such *automated* or prerecorded telephone calls to the home, except when the receiving party consents to receiving the call or when such calls are necessary in an emergency situation affecting the health and safety of the consumer, is the only effective means of protecting telephone consumers from this nuisance and privacy invasion.

Id. at § 12 (emphasis added); *see also Martin v. Leading Edge Recovery Solutions, LLC*, 2012 WL 3292838, at *4 (N.D. Ill. Aug. 10, 2012) (citing Congressional findings on TCPA’s purpose).

1 5. Congress also specifically found that “the evidence presented to the
2 Congress indicates that automated or prerecorded calls are a nuisance and an
3 invasion of privacy, regardless of the type of call....” Id. at §§ 12-13. *See*
4 *also, Mims*, 132 S. Ct. at 744.

6 6. As Judge Easterbrook of the Seventh Circuit explained in a TCPA case
7 regarding calls similar to this one:

8 The Telephone Consumer Protection Act ... is well
9 known for its provisions limiting junk-fax transmissions.
10 A less-litigated part of the Act curtails the use of
11 automated dialers and prerecorded messages to cell
12 phones, whose subscribers often are billed by the minute
13 as soon as the call is answered—and routing a call to
14 voicemail counts as answering the call. An automated
15 call to a landline phone can be an annoyance; an
16 automated call to a cell phone adds expense to
17 annoyance.

18 *Soppet v. Enhanced Recovery Co., LLC*, 679 F.3d 637, 638 (7th Cir. 2012).

19 7. The United States Congress has found abundant evidence of the use of
20 abusive, deceptive, and unfair debt collection practices by many debt
21 collectors, and has determined that abusive debt collection practices
22 contribute to the number of personal bankruptcies, to marital instability, to
23 the loss of jobs, and to invasions of individual privacy. Congress wrote the
24 Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq., to eliminate
25 abusive debt collection practices by debt collectors, to insure that those debt
26 collectors who refrain from using abusive debt collection practices are not
27 competitively disadvantaged, and to promote consistent State action to
28

1 protect consumers against debt collection abuses

2 JURISDICTION AND VENUE

3 8. This Court has federal question jurisdiction because this case arises out of
4 violation of federal law. 47 U.S.C. §227(b); *Mims v. Arrow Fin. Servs., LLC*,
5 132 S. Ct. 740 (2012). Supplemental jurisdiction for any and all state law
6 claims and allegations exists pursuant to 28 U.S.C. § 1367.
7

8 9. Venue is proper in the United States District Court for the District of Nevada
9 pursuant to 28 U.S.C. § 1391(b) because Plaintiff is a resident of Clark
10 County, the State of Nevada and Defendant is subject to personal
11 jurisdiction in the County of Clark, State of Nevada as they conduct business
12 there, and the conduct giving rise to this action took place in Nevada.
13 Further, Defendant is registered with the Nevada Secretary of State as a
14 foreign limited liability company, with a registered agent of service in Las
15 Vegas, Nevada.
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19 PARTIES

20 10. Plaintiff is, and at all times mentioned herein was, a citizen and resident of
21 Clark County, State of Nevada. Plaintiff is, and at all times mentioned herein
22 was, a “person” as defined by 47 U.S.C. § 153 (39).
23

24 11. Plaintiff is also a natural person from whom a debt collector sought to
25 collect a consumer debt which was due and owing or alleged to be due and
26 owing from Plaintiff. In addition, Plaintiff is a “consumer” as that term is
27 defined by 15 U.S.C. § 1692a(3).
28

1 12. Plaintiff is informed and believes, and thereon alleges, that Defendant is, and
2 at all times mentioned herein was, debt collector offering collection services
3 for alleged consumer debts in various industries. Defendant, in the ordinary
4 course of business, regularly, on behalf of itself or others, engages in “debt
5 collection” and is therefore a “debt collector” as defined by 15 U.S.C. §
6 1692a(6).
7

8
9 13. Defendant is and at all times mentioned herein was, a limited liability
10 company and is a “person,” as defined by 47 U.S.C. § 153i(39).
11

12 **DEFENDANT VIOLATES THE TCPA**

13 14. Sometime on or before October 2015, Defendant acquired, purchased, or
14 was assigned an alleged debt allegedly owed by Plaintiff.

15 15. Plaintiff takes no position as to the validity of the alleged debt for which
16 Defendant called.
17

18 16. Beginning on or about October 2015, Defendant or its agent/s began
19 contacting Plaintiff on her cellular telephone numbers ending in 6674 via an
20 automatic telephone dialing system (“ATDS”) as defined by 47 U.S.C. §
21 227(a)(1), as prohibited by 47 U.S.C. § 227(b)(1)(A). The calls continued
22 into 2016.
23

24 17. This ATDS has the capacity to store or produce telephone numbers to be
25 called, using a random or sequential number generator.
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1 18. On or about October 15, 2015, Defendant used an ATDS to contact Plaintiff
2 on her cellular telephone number ending in 6674.

3 19. In attempt to collect the alleged debt, Defendant repeatedly contacted
4 Plaintiff on her cellular telephone number ending 6674 using an ATDS
5 and/or an automated voice message and/or prerecorded messages.
6

7 20. At no time did Plaintiff enter into a business relationship with Defendant.
8

9 21. At no time did Plaintiff provide her cellular phone number to Defendant
10 through any medium.

11 22. Defendant placed approximately 16 collection calls to Plaintiff's cellular
12 telephone without Plaintiff's prior express consent.
13

14 23. Upon information and belief, the purpose of these calls from Defendant or
15 its agent/s was to collect an alleged debt for surrounding a debt that was
16 previously discharged in Plaintiff's Bankruptcy.
17

18 24. The telephone number Defendant or its agent/s called was assigned to a
19 cellular telephone service for which Plaintiff incurs a charge for incoming
20 calls pursuant to 47 U.S.C. § 227(b)(1).
21

22 25. These telephone calls from Defendant to Plaintiff's cellular telephone were
23 not for emergency purposes as defined by 47 U.S.C. § 227(b)(1)(A)(i).
24

25 26. Plaintiff did not provide Defendant prior express consent to receive calls to
26 their cellular telephone utilizing an ATDS, pursuant to 47 U.S.C. § 227
27 (b)(1)(A).
28

1 27. These telephone calls by Defendant or its agent(s), violated 47 U.S.C. §
2 227(b)(1).

3 **TCPA CLASS ACTION ALLEGATIONS**

4 28. Plaintiff brings this action on behalf of herself and on behalf of all others
5 similarly situated (the "Class").
6

7 29. Plaintiff represents, and is a member of the Class, consisting of:

8 All persons within the United States who received
9 any telephone call/s from Defendants or its agent/s
10 and/or employee/s to said person's cellular telephone
11 made through the use of any automatic telephone
12 dialing system or with an artificial or prerecorded
13 voice within the four years prior to the filing of the
14 Complaint.

15 30. Defendant and its employees or agents are excluded from the Class.

16 Plaintiff does not know the number of members in the Class, but believes the
17 Class members number in the hundreds, if not more. This matter should
18 therefore be certified as a Class action to assist in the expeditious litigation
19 of this matter.
20

21 31. Plaintiff and members of the Class were harmed by the acts of Defendant in
22 at least the following ways: Defendant, either directly or through its agents,
23 illegally contacted Plaintiff and the Class members via their cellular
24 telephones by using an ATDS and/or artificial or prerecorded voice, thereby
25 causing Plaintiff and the Class members to incur certain cellular telephone
26 charges or reduce cellular telephone time for which Plaintiff and the Class
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1 members previously paid, and invading the privacy of said Plaintiff and the
2 Class members. Plaintiff and the Class members were damaged thereby.

3 32. This suit seeks only statutory damages and injunctive relief for recovery of
4 economic injury on behalf of the Class, and it expressly is not intended to
5 request any recovery for personal injury and claims related thereto. Plaintiff
6 reserves the right to expand the Class definition to seek recovery on behalf
7 of additional persons as warranted as facts are learned in further
8 investigation and discovery.
9

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11 33. The joinder of the Class members is impractical and the disposition of their
12 claims in the Class action will provide substantial benefits both to the parties
13 and to the court. The Class can be identified through Defendant's records or
14 Defendant's and/or its agent's records.
15

16
17 34. There is a well-defined community of interest in the questions of law and
18 fact involved affecting the parties to be represented. The questions of law
19 and fact to the Class predominate over questions which may affect
20 individual Class members, including the following:
21

- 22 a) Whether, within the four years prior to the filing of the Complaint,
23 Defendant or its agents made any call or sent any artificial or
24 prerecorded voice message to the Class (other than a message made
25 for emergency purposes or made with the prior express consent of the
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1 called party) or used any automatic dialing system to any telephone
2 number assigned to a cellular phone service;

3 b) Whether, within the four years prior to the filing of the Complaint,
4 Defendant or its agents made any call or sent any artificial or
5 prerecorded voice message to the Class (other than a message made
6 for emergency purposes or made with the prior express consent of the
7 called party) using any automatic dialing system to any telephone
8 number assigned to a cellular phone service;

9 c) Whether Plaintiff and the Class members were damaged thereby, and
10 the extent of damages for such violation; and

11 d) Whether Defendant and its agent/s should be enjoined from engaging
12 in such conduct in the future.

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17 35. As a person that received at least one autodialed, prerecorded message call
18 utilizing an ATDS without Plaintiff's prior express consent, Plaintiff is
19 asserting claims that are typical of the Class. Plaintiff will fairly and
20 adequately represent and protect the interests of the Class in that they have
21 no interests antagonistic to any member of the Class.

22
23 36. Plaintiff and the members of the Class have all suffered irreparable harm as
24 a result of the Defendant's unlawful and wrongful conduct. Absent a class
25 action, the Class will continue to face the potential for irreparable harm. In
26 addition, these violations of law will be allowed to proceed without remedy
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1 and Defendant will likely continue such illegal conduct. Because of the size
2 of the individual Class members' claims, few, if any, Class members could
3 afford to seek legal redress for the wrongs complained of herein.

4
5 37. Plaintiff has retained counsel experienced in handling class action claims
6 and claims involving violations of the Telephone Consumer Protection Act.

7
8 38. A class action is a superior method for the fair and efficient adjudication of
9 this controversy. Class-wide damages are essential to induce Defendant to
10 comply with federal and Nevada law. The interest of Class members in
11 individually controlling the prosecution of separate claims against Defendant
12 is small because the maximum statutory damages in an individual action for
13 violation of privacy are minimal. Management of these claims is likely to
14 present significantly fewer difficulties than those presented in many class
15 claims.
16

17
18 39. Defendant has acted on grounds generally applicable to the Class, thereby
19 making appropriate final injunctive relief and corresponding declaratory
20 relief with respect to the Class as a whole.
21

22 **Defendant Violates the FDCPA**

23 40. Defendant's collection calls to Plaintiff's cellular telephone were
24 "communications" as defined in 15 U.S.C. § 1692(a)(2).
25

26 41. The alleged debt is regarding personal living expenses, which is money,
27 property or their equivalent, due or owing or alleged to be due or owing
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1 from a natural person by reason of a consumer credit transaction. Because
2 this alleged debt is for personal living expenses, which is primarily for
3 personal, family, or household purposes, this action arises out of a “debt” as
4 that term is defined by 15 U.S.C. 1692a(5).
5

6 42. On or about August 7, 1015, Plaintiff filed for Bankruptcy in the United
7 States Bankruptcy Court for the District of Nevada. Plaintiff’s case was
8 assigned Case Number 15-14542-led (the “Bankruptcy”).
9

10 43. The alleged debt was not declared “non-dischargeable” pursuant to 11
11 U.S.C. § 523 *et seq.*
12

13 44. Defendant also did not request relief from the “automatic stay” codified at
14 11 U.S.C. §362 *et seq.* while the Plaintiff’s Bankruptcy was pending. Yet the
15 collection calls began and continued throughout Plaintiff’s Bankruptcy and
16 even after the Bankruptcy discharge.
17

18 45. On or about November 12, 2015, Plaintiff received a Bankruptcy discharge.

19 46. Defendant’s subsequent post-discharge attempts to collect the alleged debt
20 from Plaintiff were therefore unlawful under the FDCPA.
21

22 47. By placing calls attempting to collect an alleged debt that was previously
23 discharged through Plaintiff’s Bankruptcy, Defendant violated 15 U.S.C. §
24 1692e by using deceptive and misleading means to collect Plaintiff’s alleged
25 debt.
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1 48. Defendant's attempt to collect an alleged debt that was previously
2 discharged through Plaintiff's Bankruptcy violated 15 U.S.C. § 1692e(2) by
3 mischaracterizing the amount allegedly owed.
4

5 49. Defendant's attempt to collect an alleged debt that was previously
6 discharged through Plaintiff's Bankruptcy violated 15 U.S.C. § 1692e(10)
7 by using deceptive means to collect the alleged debt.
8

9 50. Furthermore, Defendant's attempt to collect an alleged debt that was
10 previously discharged through Plaintiff's Bankruptcy violated 15 U.S.C. §
11 1692f by using unconscionable means to collect the alleged debt.
12

13 51. Defendant's attempt to collect an alleged debt that was previously
14 discharged through Plaintiff's Bankruptcy was an attempt to collect an
15 amount of money that Defendant was not entitled to, and Defendant
16 therefore violated 15 U.S.C. § 1692f(1).
17

18 **FIRST CAUSE OF ACTION**
19 **NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT**
20 **47 U.S.C. § 227 ET SEQ.**

21 52. Plaintiff incorporates by reference all of the above paragraphs of this
22 Complaint as though fully stated herein.
23

24 53. The foregoing acts and omissions of Defendant constitute numerous and
25 multiple negligent violations of the TCPA, including but not limited to each
26 and every one of the above-cited provisions of 47 U.S.C. § 227 et seq.
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1 54. As a result of Defendant's negligent violations of 47 U.S.C. § 227 et seq.,
2 Plaintiff and the Class are entitled to an award of \$500.00 in statutory
3 damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).
4

5 55. Plaintiff and the Class are also entitled to and seek injunctive relief
6 prohibiting such conduct in the future.

7
8 **SECOND CAUSE OF ACTION**
9 **KNOWING AND/OR WILLFUL VIOLATIONS OF THE**
10 **TELEPHONE CONSUMER PROTECTION ACT**
11 **47 U.S.C. § 227 ET SEQ.**

12 56. Plaintiff incorporates by reference all of the above paragraphs of this
13 Complaint as though fully stated herein.

14 57. The foregoing acts and omissions of Defendant constitute numerous and
15 multiple knowing and/or willful violations of the TCPA, including but not
16 limited to each and every one of the above-cited provisions of 47 U.S.C. §
17 227 et seq.
18

19 58. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. §
20 227 et seq., Plaintiff and the Class are entitled to an award of \$1,500.00 in
21 statutory damages, for each and every violation, pursuant to 47 U.S.C. §
22 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).
23

24 59. Plaintiff and the Class are also entitled to and seek injunctive relief
25 prohibiting such conduct in the future.
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**THIRD CAUSE OF ACTION
VIOLATION OF THE FAIR DEBT COLLECTION PRACTICES ACT
15 U.S.C. §§ 1692-1692(P) (FDCPA)**

60. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

61. The foregoing acts and omissions constitute numerous and multiple violations of the FDCPA.

62. As a result of each and every violation of the FDCPA, Plaintiff is entitled to damages of \$1,000 pursuant to 15 U.S.C. § 1692k(a)(2)(A); and reasonable attorney's fees and costs pursuant to 15 U.S.C. § 1692k(a)(3) from Defendant.

PRAYER FOR RELIEF

Plaintiff respectfully requests the Court grant Plaintiff and the Class members the following relief against Defendant:

**FIRST CAUSE OF ACTION
NEGLIGENT VIOLATION OF THE TCPA
47 U.S.C. § 227 ET SEQ.**

- As a result of Defendant's negligent violations of 47 U.S.C. § 227(b)(1), Plaintiff seeks for herself and each Class member \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B);
- Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such conduct in the future; and

- Any other relief the Court may deem just and proper.

**SECOND CAUSE OF ACTION
KNOWING AND/OR WILLFUL VIOLATIONS OF THE TCPA
47 U.S.C. § 227 ET SEQ.**

- As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227(b)(1), Plaintiff seeks for herself and each Class member \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).
- Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such conduct in the future.
- Any other relief the Court may deem just and proper.

**THIRD CAUSE OF ACTION
VIOLATION OF THE FAIR DEBT COLLECTION PRACTICES ACT
15 U.S.C. §§ 1692-1692(P) (FDCPA)**

- An award of statutory damages of \$1,000.00 to Plaintiff, pursuant to 15 U.S.C. § 1692k(a)(2)(A), against Defendant;
- An award of costs of litigation and reasonable attorney's fees, pursuant to 15 U.S.C. § 1692k(a)(3), against Defendant; and
- Any other relief the Court may deem just and proper.

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TRIAL BY JURY

63. Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Dated: March 31, 2016

Respectfully submitted,

BY: /s/ DANNY J. HOREN
DANNY J. HOREN, ESQ.
ATTORNEY FOR PLAINTIFF

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CERTIFICATE OF SERVICE